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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,364	08/27/2003	Jean Prevost	9-13383-31US	3696
20988	7590	03/29/2006	EXAMINER	
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			SNIDER, THERESA T	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,364

Applicant(s)

PREVOST, JEAN

Examiner

Theresa T. Snider

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/27/2003</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-13, drawn to an apparatus, classified in class 15, subclass 397.
 - II. Claims 14-21, drawn to a method for treating turf, classified in class 134, subclass 42.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to aerator soil and plant seed.
3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Jody Factor on 2/28/2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-21 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

5. The disclosure is objected to because of the following informalities: the title of the invention should be amended to reflect the elected invention.

Appropriate correction is required.

Claim Objections

6. Claims 2-10 and 12-13 objected to because of the following informalities: claims 2-10 and 12-13, line 1, 'An' should be replaced with 'The'. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 4-5 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pendergrass.

Pendergrass discloses a hollow cylinder including a plurality of hollow spikes extending radially and outwardly, each of the spikes having an orifice in fluid communication with an inner space within the cylinder (fig. 1, #11, fig. 3, #18).

Pendergrass discloses a support frame on which the cylinder is rotatably supported (fig. 1, #14).

Pendergrass discloses a pressurized fluid system for supplying fluid into the cylinder (fig. 1, #21).

With respect to claim 2, Pendergrass discloses the pressurized fluid system including a pressurized air source, a pressurized air distributor disposed in the cylinder and a line connecting the two (fig. 1, #21,22, fig. 2, #59).

With respect to claim 4, Pendergrass discloses a means for adjusting the height of the cylinder (col. 4, lines 25-27 and 29-31).

With respect to claim 5, Pendergrass discloses the air distributor including an air channel disposed parallel to a rotating axis of the cylinder (fig. 2, #23).

With respect to claim 10, Pendergrass discloses the support frame including a plurality of wheels (fig. 1, #25).

9. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Waterman.

Waterman discloses a hollow cylinder including a plurality of hollow spikes extending radially and outwardly, each of the spikes having an orifice in fluid communication with an inner space within the cylinder (fig. 2, #10, 12.1).

Waterman discloses a support frame on which the cylinder is rotatably supported (fig. 2, #2).

Waterman discloses a pressurized fluid system for supplying fluid into the cylinder (col. 1, lines 36-38).

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With respect to claim 11, Waterman discloses a vacuum system including means for separating particulate matter (col. 2, lines 11-14, a vacuum head connected to a vacuum cleaner known to have a filtering device).

With respect to claim 12, Waterman discloses an air channel disposed within the cylinder (fig. 2, unnumbered region within #11, #3).

With respect to claim 13, Waterman discloses means for adjusting the height of the cylinder (col. 2, lines 23-26).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pendergrass.

Pendergrass disclose a similar apparatus however fails to disclose a pressure controller.

It would have been obvious to one of ordinary skill in the art to provide a pressure controller in Pendergrass to ensure that enough pressure is supplied to the cylinder to allow for effective penetration of a surface.

Allowable Subject Matter

13. Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: The prior art discloses an apparatus having a hollow cylinder including a plurality of hollow spikes extending radially and outwardly, each of the spikes having an orifice in fluid communication with an inner space within the cylinder, a support frame on which the cylinder is rotatably supported, a pressurized fluid system for supplying fluid into the cylinder including a pressurized air source, a pressurized air distributor disposed in the cylinder and a line connecting the two HOWEVER fails to disclose or fairly suggest the further inclusion of a vacuum system.

Conclusion

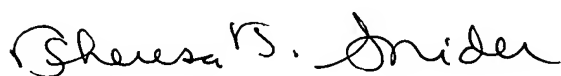
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hukuba discloses an apparatus have a spiked cylinder for use in suction material from a surface. Cady, Hanna, Steadman and Miksitz disclose apparatus with a hollow, spiked cylinder for supplying pressurized fluid to a surface.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277. The examiner can normally be reached on Monday-Thursday (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Theresa T. Snider
Primary Examiner
Art Unit 1744

3/20/2006